

**FILED**

**NOT FOR PUBLICATION**

AUG 03 2009

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: VICENTE CABULOY,  
SR.,

Debtor.

No. 07-17134

D.C. No. CV-06-00422-HG/KSC

MEMORANDUM<sup>\*</sup>

MILAGROS CABULOY BURCENA; et  
al.,

Appellants,

v.

BANK ONE, formerly known as First  
National Bank of Chicago,

Appellee.

Appeal from the United States District Court  
for the District of Hawaii  
Helen Gillmor, Chief Judge, Presiding

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 29, 2009\*\*

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Milagros Cabuloy Burcena and others (“Burcena”) appeal from the district court’s judgment affirming the bankruptcy court’s order annulling the automatic stay as to Bank One’s foreclosure sale. We have jurisdiction pursuant to 28 U.S.C. § 158(d). We review de novo the district court’s conclusion that the appeal is moot, *Nat’l Mass Media Telecomm. Sys., Inc., v. Stanley (In re Nat’l Mass Media Telecomm. Sys., Inc.)*, 152 F.3d 1178, 1180 (9th Cir. 1998), and we affirm.

The appeal is moot because Burcena failed to obtain a stay of the sale of the property to a nonparty. *See id.* (affirming dismissal on mootness grounds where property at issue was sold and court could not grant effective relief).

Burcena’s contentions that the appeal is not moot because the bankruptcy court lacked jurisdiction and thus state law permits invalidation of the sale is unpersuasive. The bankruptcy court retained jurisdiction to annul the automatic stay after dismissal. *See Aheong v. Mellon Mortgage Co. (In re Aheong)*, 276 B.R. 233, 239-40 & n.8 (B.A.P. 9th Cir. 2002) (concluding that bankruptcy court had

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\*\* The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

jurisdiction to annul automatic stay after dismissal because the order effectuated and interpreted the dismissal order).

Further, the debtor's death did not affect the bankruptcy court's jurisdiction. *See* Fed. R. Bankr. P. 1016 (stating that in the event of the debtor's death, "the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death . . . had not occurred").

Finally, Bank One properly served notice of the hearing on the motion to annul by mailing it to the last known address of the debtor. *See* Fed. R. Bankr. P. 7004(b), 9014(a), (b) (allowing service by mail of motions).

Bank One's request for judicial notice is granted.

**AFFIRMED.**

07-17134 Burcena, et al v. Bank One "Oral Screening  
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**United States Court of Appeals for the Ninth Circuit**

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**Case Name:** Burcena, et al v. Bank One

**Case Number:** [07-17134](#)

**Document(s):** [Document\(s\)](#)

**Docket Text:**

FILED MEMORANDUM (J. CLIFFORD WALLACE, EDWARD LEAVY and MICHAEL DALY HAWKINS) AFFIRMED; Bank One's request for judicial notice is granted. FILED AND ENTERED JUDGMENT. [7013162] (DMM)

The following document(s) are associated with this transaction:

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**Notice will be electronically mailed to:**

USDC, Honolulu

Mr. McAllister, David Edward (*daily summary*)

**Notice will be mailed to:**

Dubin, Gary Victor, Attorney

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Honolulu, HI 96813

Honorable Gillmor, Helen, U.S. District Judge

District of Hawaii (Honolulu)

United States Courthouse

300 Ala Moana Blvd.

Honolulu, HI 96850

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**DOCKET ENTRY ID:** 7013162

**RELIEF(S) DOCKETED:**

AFFIRMED

to take judicial notice

**DOCKET PART(S) ADDED:** 6442714, 6442715, 5548615